

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2009-10960 NHE

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Appellant's request for a hearing. After due notice, a hearing was held on ██████████. ██████████ (Appellant) appeared and testified on her own behalf. ██████████ with ██████████

██████████ represented the Department. ██████████; and ██████████, appeared and testified as witnesses for the Department.

ISSUE

Did the Department properly determine that the Appellant did not require a Nursing Facility Level of Care?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a ██████-year-old woman who has been residing at the ██████████ since on or about ██████████. (Exhibit A)
2. On ██████████, ██████████ received a referral from ██████████ to conduct a Level of Care Determination (LOCD) for Appellant. (Exhibit A)

3. On [REDACTED], a Michigan Medicaid Nursing Facility LOCD was conducted by [REDACTED], [REDACTED] Options Counselor (OC), to determine if Appellant met the criteria for Medicaid nursing facility coverage. (Exhibit B & C)
4. The OC determined that Appellant did not meet the nursing facility eligibility criteria for Doors 1 through 7 and provided Appellant with an Adequate Action Notice of the determination. (Exhibit C & D)
5. On [REDACTED], the State Office of Administrative Hearings and Rules received Appellant's hearing request, protesting the nursing facility LOCD completed in [REDACTED].
6. On or about [REDACTED], [REDACTED] completed its review and provided Appellant with written notice that she did not meet the nursing facility eligibility criteria for Doors 1 through 7. (Exhibit E)
7. On [REDACTED], the State Office of Administrative Hearings and Rules received Appellant's hearing request, protesting the nursing facility LOCD.

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan, under Title XIX of the Social Security Act Medical Assistance Program.

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria. Nursing facility residents must also meet Pre-Admission Screening/Annual Resident Review requirements.

The Medicaid Provider Manual (MPM), Nursing Facilities Coverage's Section, January 1, 2007, lists the policy for admission and continued eligibility process, as well as outlines functional/medical criteria requirements for Medicaid-reimbursed nursing facility, MIChoice, and PACE services. (D Exhibit I)

Section 4.1.D. of the Medicaid Provider Manual Nursing Facilities Coverage's Section references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination tool. The LOCD is mandated for all Medicaid-reimbursed admissions to

nursing facilities or enrollments in MI Choice or PACE on and after November 1, 2004. All Medicaid beneficiaries who reside in a nursing facility are required to meet the functional and medical eligibility criteria on an ongoing basis.

MPM, Nursing Facility Coverage's, January 1, 2007, page 9.

Nursing facilities, MIChoice, and PACE, have multiple components for determining eligibility for services. The Medicaid Provider Manual Nursing Facilities Section, and the *Nursing Facility Eligibility and Admission Process, November 1, 2004, Pages 1-7* explain the components that comprise the eligibility and admission process for nursing facility eligibility and admission. The LOCD is the assessment tool to be utilized when determining eligibility for admission and continued Medicaid nursing facility coverage. There are five necessary components for determining eligibility for Medicaid nursing facility reimbursement.

- Verification of Medicaid Eligibility
- Correct/timely Pre-Admission Screening/Annual Resident Review (PASARR)
- Physician Order for Nursing Facility Services
- Appropriate Placement based on Medicaid Nursing Facility Level of Care Determination
- Freedom of Choice.

See MDCH Nursing Facility Eligibility and Admission Process, Page 1 of 7, 11/01/04.

Appellant was a resident ██████████ at all times relevant to this matter. In ██████████, a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) was conducted to determine whether Appellant met criteria for Medicaid nursing facility coverage. The Department provided evidence that the Michigan Medicaid Nursing Facility LOCD demonstrated that the Appellant did not meet the criteria. (Exhibit B)

After Appellant requested that ██████████ review the LOCD determination, ██████████ completed its review and provided Appellant with written notice that she did not meet the criteria for Doors 1 through 7, and Appellant was advised of her right to appeal the determination. (Exhibit E)

The Level of Care Assessment Tool consists of seven service entry Doors. The doors are: Activities of Daily Living, Cognitive Performance, Physician Involvement, Treatments and Conditions, Skilled Rehabilitative Therapies, Behavior, and Service Dependency. In order to be found eligible for Medicaid Nursing Facility placement the Appellant must meet the requirements of at least one Door. The Medicaid Provider Manual explicitly states that a nursing home resident must meet the Level of Care (LOC) criteria on an ongoing basis. (MPM, Nursing Facility Coverages, October 1, 2007)

The Appellant bears the burden of proving, by a preponderance of evidence, that she met the LOC criteria within the last 7 days prior to the assessment completed in [REDACTED]. The reasons Appellant did not meet the criteria are listed per door below:

Door 1
Activities of Daily Living (ADLs)

The Department witnesses testified that with regard to Appellant's ADLs, Appellant was independent in Bed Mobility, Toilet Use, and Eating. Appellant must score at least six points to qualify under Door 1. (See Michigan Medicaid Nursing Facility Level of Care form, page 3 of 9)

Scoring Door 1: The applicant must score at least six points to qualify under Door 1.

(A) Bed Mobility, (B) Transfers, and (C) Toilet Use:

- Independent or Supervision = 1
- Limited Assistance = 3
- Extensive Assistance or Total Dependence = 4
- Activity Did Not Occur = 8

(D) Eating:

- Independent or Supervision = 1
- Limited Assistance = 2
- Extensive Assistance or Total Dependence = 3
- Activity Did Not Occur = 8

The Appellant scored less than 6 points. (Exhibit B) Therefore, she did not qualify under Door 1.

Door 2
Cognitive Performance

The Department provided documentary evidence that with regard to Cognitive Performance, Appellant had a memory problem; her cognitive skills for daily decision making was considered "Modified Independent"; and Appellant was able to make herself understood. (See Michigan Medicaid Nursing Facility Level of Care form, pages 3-4 of 9)

Scoring Door 2: The applicant must score under one of the following three options to qualify under Door 2.

1. "Severely Impaired" in Decision Making.
2. "Yes" for Memory Problem, and Decision Making is "Moderately Impaired" or "Severely Impaired."

3. "Yes" for Memory Problem, and Making Self Understood is "Sometimes Understood" or "Rarely/Never Understood."

The preponderance of evidence fails to establish that Appellant met the above criteria. Therefore, the Department properly determined that the Appellant did not qualify under Door 2.

Door 3 **Physician Involvement**

The Department provided documentary evidence that the Appellant had only 1 physician visit and 1 physician order change within 14 days prior to the assessment. In order to qualify under Door 3, Appellant had to meet either of the following:

1. At least one Physician Visit exam AND at least four Physicians Order changes in the last 14 days, OR
2. At least two Physician Visit exams AND at least two Physicians Order changes in the last 14 days.

The preponderance of evidence fails to establish that Appellant met the above criteria. Therefore, the Department properly determined that the Appellant did not qualify under Door 3.

Door 4 **Treatments and Conditions**

In order to qualify under Door 4, the Appellant had to receive, within 14 days of the assessment date, any of the following health treatments or demonstrated any of the following health conditions:

- A. Stage 3-4 pressure sores
- B. Intravenous or parenteral feedings
- C. Intravenous medications
- D. End-stage care
- E. Daily tracheostomy care, daily respiratory care, daily suctioning
- F. Pneumonia within the last 14 days
- G. Daily oxygen therapy
- H. Daily insulin with two order changes in last 14 days
- I. Peritoneal or hemodialysis

The Department provided documentary evidence that the Appellant did not receive treatment for nor demonstrate any of the health conditions required to qualify under Door 4 within 14 days of the assessment date. Accordingly, the Department properly determined that Appellant did not qualify under Door 4.

Door 5
Skilled Rehabilitation Therapies

In order to qualify under Door 5, an applicant had to have medical documentation of receiving Speech, Occupational or Physical Therapy within seven days of the assessment. The applicant was required to:

...[H]ave required at least 45 minutes of active ST, OT or PT (scheduled or delivered) in the last 7 days and continues to require skilled rehabilitation therapies to qualify under Door 5

The Department provided documentary evidence that the Appellant had not received any Skilled Rehabilitation Therapy within 7 days of the date of the assessment. Therefore, the Department properly determined that the Appellant did not qualify under Door 5.

Door 6
Behavior

An applicant may qualify under Door 6 if the applicant displayed certain behaviors during the seven days before the assessment. LOCD tool, page 6, provides a listing of behaviors recognized under Door 6. The Department provided evidence that the Appellant did not exhibit any of the following behavior symptoms during the 7 days before the assessment: Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, or Resists Care. Additionally, the evidence on the record establishes that Appellant did not exhibit any of the following Problem Conditions during the 7 days before the assessment: Delusions and Hallucinations. In order to qualify under Door 6, Appellant had a score under the following two options:

1. A "Yes" for either delusions or hallucinations within the last 7 days.
2. The applicant must have exhibited any one of the following behaviors for at least 4 of the last 7 days (including daily): Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, or Resisted Care.

The Department established that Appellant did not qualify under Door 6 as she did not score under either of the two possible categories.

Door 7
Service Dependency

Appellant could have qualified under Door 7 if there was evidence that she had been in

a nursing facility for at least one year and required on-going services to maintain her current functional status. Appellant has resided in the nursing facility for at least one year, however, it was established that she does not require ongoing service dependency to maintain her functional status. Since service dependency was not established, Appellant did not qualify under Door 7.

The Department provided sufficient information to show that Appellant was not eligible for Medicaid nursing facility services at the time relevant to this matter. The preponderance of evidence does not establish that Appellant met the requirements for any Door 1 through 7 on the Medicaid Nursing Facility Level of Care Determination Tool, and she did not meet the Frailty Exception standard. Therefore, the Department's decision must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined that the Appellant did not require a Medicaid Nursing Facility Level of Care.

IT IS THEREFORE ORDERED that

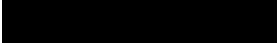
The Department's decision is AFFIRMED.

Marya A. Nelson-Davis
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 3/17/2009


Docket No. 2009-10960NHE
Decision and Order

***** NOTICE *****

The State Office of Administrative Hearings and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.